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December 13, 2001

Mr. Roy Q. Luckett, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington D.C. 20463

Re: Response to RTB Finding in MUR 5020 on Behalf of Mr. Stephen A. Wynn

Dear Mr. Luckett:

This letter responds to your letter and the materials attached to your letter dated October 18, 2001 addressed to Mr. Stephen A. Wynn wherein you state that the Federal Election Commission ("Commission") has found that there is reason to believe that Mr. Wynn violated 2 U.S.C. section 441b(a). Our preliminary response is set forth below.

EXECUTIVE SUMMARY OF OUR PRELIMINARY RESPONSE

As an initial matter, and as further discussed below, we believe that Mr. Wynn is not a proper respondent in this MUR. While Mr. Wynn attended the Gormley event held at Le Cirque in Las Vegas at issue in this MUR, he had no role in managing any aspect of the event. Indeed, the sole basis on which the Office of General Counsel ("OGC") apparently based its decision to name Mr. Wynn as a respondent in this MUR is a single sentence from a New York Times article written months after the event, by a journalist located nearly three thousand miles away from Las Vegas who did not attend the event, and who apparently based much of the news article on the review of timely-filed Gormley federal campaign disclosure reports.

Based upon prior Commission practice and applicable law, we believe there is simply ***no basis*** on which to plausibly conclude that Mr. Wynn is a proper respondent in this MUR. (*See, e.g.*, Pre-MUR No. 258, General Counsel's Report, and MUR 3540 *In re Prudential Securities* [in the context of an extensive collective enterprise by several executives, including the Chairman of the company, to engage in corporate facilitation, the corporation was named as a respondent and not individual executives even though many of the same individuals were involved in a previous FEC MUR involving virtually the same facts]; *FEC v Friends of Jane*

Harman (C.D. Cal. 1999) 59 F. Supp. 2d 1046, 1052 n.4 [in an enforcement action arising out of an MUR involving a congressional campaign and a corporation alleging violations of 441b(a), the corporation and ***not*** individual executives were parties to a conciliation agreement even though the undisputed evidence made clear that individual executives were heavily involved in orchestrating the event, and in fact were put on notice ***prior*** to the event that it was structured and organized in violation of the section 441b(a)].)

While not waiving our belief that Mr. Wynn is not a proper respondent to this MUR, and while requesting that Mr. Wynn be immediately dismissed as a respondent in this matter, in the alternative, ***Mr. Wynn hereby respectfully requests that the Commission and Mr. Wynn enter into either the Commission's Alternative Dispute Resolution ("ADR") procedures and/or pre-probable cause conciliation pursuant to CFR section 111.18(d) with respect to the issues raised in the OGC's RTB brief.*** We respectfully request ADR and/or pre-probable cause conciliation in an attempt to resolve this issue as expeditiously as possible, and in an effort to be as cooperative as possible.

CONCERNS RAISED BY THE COMMISSION IN ITS RTB FACTUAL AND LEGAL ANALYSIS

The Commission's Factual and Legal Analysis set forth in its RTB brief asserts three potential areas of concern with respect to the Gormley event held at Le Cirque: (1) the possible use of corporate resources to collect and/or forward contributions to the Gormley committee based upon the assumption that neither Mr. Gormley nor anyone from his campaign staff attended the event; (2) a possible discount below fair market value provided to the Gormley committee with respect to catering and room charges; and (3) the possible use of a corporate list of vendors in connection with the event.

With respect to Mr. Wynn, the Factual and Legal Analysis asserts, based upon ***no*** evidence -- much less ***substantiated*** evidence -- that Mr. Wynn "may have been involved with the planning of the event" (RTB Brief at 4), or may have "played a role in providing [a] list" of corporate vendors (*id.*), or had extensive "personal involvement" in the collection of contribution checks. (*id.* at 6).

OUR RESPONSE AND SUPPORTING ANALYSIS

We do not believe Mr. Wynn is a proper respondent to MUR 5020 and we therefore respectfully request that the Commission promptly dismiss Mr. Wynn as a respondent in this matter. We base our request upon the following three, equally compelling reasons set forth below.

1. Lack of Substantiated Evidence

First, as a threshold matter, it bears emphasis that the sole basis on which Mr. Wynn was apparently named as a respondent in this MUR is a single sentence from a New York Times article written months after the event, by a journalist located nearly three thousand miles away from Las Vegas, who did not attend the event, and who apparently based much of his "journalistic vignette" upon his the review of timely-filed Gormley campaign reports.

The initial complaint filed with the Commission (which had to be obtained by Mr. Wynn through third parties because it was not provided to Mr. Wynn) did not even refer to Mr. Wynn's involvement in ***any*** campaign activity -- much less even mention his personal involvement with the Gormley event. This is significant because the complaint also raises allegations concerning Trump Hotel Casinos, including specific allegations against the Chairman of that company, Mr. Donald Trump. The initial complaint also raises specific allegations against several other individuals. Thus, while the initial complaint raises ***specific factual allegations*** with respect to ***specific*** individual ***executives***, it raises ***no*** such similar allegations with respect to Mr. Wynn. Thus, Mr. Wynn appears to have been singled-out in his individual capacity based upon no evidence of any wrongful conduct.

It bears emphasis that Mr. Wynn has had no prior record of ***any*** violations of federal campaign law, and has led a distinguished and unblemished business career for decades. In light of this, and in light of the fact that, as discussed below, the unsupported assumptions on which the Legal and Factual Analysis is based concerning Mr. Wynn's involvement in the Gormley event are incorrect, the Commission should not allow an unsubstantiated newspaper article to drag Mr. Wynn – and his reputation – through an elongated enforcement process.

Accordingly, in light of the fact that neither the initial complaint nor the May 15 New York Times article offers any ***substantiated*** factual basis on which to conclude Mr. Wynn personally committed a violation of section 441b(a), there is simply no basis on which to proceed against Mr. Wynn. (*See, e g*, Bauer & Kafka, U.S. Fed. Elec. Law, (1984) Ch. 13 at 5 (emphasis added) [stating that the "reason to believe standard" is met where the Commission possesses enough evidence to create a "***substantiated*** suspicion" that a violation has occurred.].)

2. Lack of Involvement in Alleged Violations

Second, contrary to the unsubstantiated assertions set forth in the OGC's Factual and Legal Analysis, while Mr. Wynn attended the Gormley event, Mr. Wynn did not play ***any role*** in (1) the "planning of the event" (RTB Brief at 4); (2) "providing" a list of corporate vendors to attend the event (*id.*); or (3) "gathering . . . executives" (*id.* at 5) to attend the event. In sum, while Mr. Wynn, as Chairman, may have consented to the event being held in a lawful manner, and while he attended the event, he was not, contrary to the unsubstantiated assertions contained

in the OGC's Factual and Legal Analysis, "personally involved" in any effort to use corporate resources to collect and forward contribution checks to the Gormley Committee.[1]

3. Lack of Legal Support for Naming Mr. Wynn as a Respondent

Third, based upon the fact that Mr. Wynn had no personal involvement in managing the Gormley event, we believe that applicable law, including not only the Federal Election Campaign Act ("FECA"), but also case law involving analogous statutory schemes, as well as past Commission practice in the context of MURs involving facts similar to those at issue here, make clear that Mr. Wynn is not a proper respondent in this MUR.

For example, in *FEC v. Friends of Jane Harman*, the undisputed evidence demonstrated that the Hughes Aircraft Company ("Hughes") engaged in the illegal use of corporate facilities to host a fundraiser for a congressional candidate. The event was conceived of by the Congressional candidate and Hughes' Chairman, Michael Armstrong, the latter of whom requested that Hughes' governmental affairs and legal department "make arrangements for the fundraiser." (*FEC v. Friends of Jane Harman*, 59 F. Supp. 2d at 1047-49.) Extensive planning

[1] As the Commission is aware, MGM MIRAGE ("MGM") purchased Mirage Resorts, Inc. ("Mirage"). As a result of the acquisition by MGM of Mirage, Mr. Wynn is no longer the chairman of Mirage, as that corporate entity exists as a subsidiary of MGM. Currently, Mr. Wynn is chairman of Wynn Resorts, LLC. Because Mr. Wynn did not play any role in the three areas of concern outlined in the Factual and Legal Analysis, and because Mr. Wynn has no formal relationship with MGM, and because further Mr. Wynn does not maintain nor have access to Mirage corporate files, Mr. Wynn is unable to provide any direct evidence responding to the three allegations concerning the use of corporate resources in connection with the Gormley event.

However, because some of the former Mirage employees who worked for Mirage at the time of the event at issue now work for MGM, Mr. Wynn has confirmed through review of MGM's response (filed on December 12, 2001), that a number of the assumptions upon which the Commission based its Factual and Legal Analyses in MUR 5020 are incorrect. More specifically, representatives of MGM have stated that the travel expenses of Mr. Gormley to travel to Las Vegas were not paid by Mirage, or any related corporate entity. Similarly, Mr. Wynn did not provide any transportation, or pay for the transportation expenses of Mr. Gormley to attend the Las Vegas event. Additionally, MGM has stated that Mirage in fact did not make an impermissible in-kind contribution to the Gormley Committee in connection with the catering and room rental costs relating to the Gormley fundraising event held at Le Cirque. Finally, MGM has stated that neither Mirage nor any agent of Mirage provided any vendor, customer, or client lists to the Gormley campaign for use in connection with the event held in Las Vegas. Nor did Mr. Wynn provide any vendor, customer or client lists to the Gormley campaign for use in connection with the Gormley event held in Las Vegas.

for the fundraiser was undertaken by a variety of Hughes' corporate executives. (*Id.* at 1047-52.) Significantly, notwithstanding the fact that Hughes executives were put on notice prior to the event that it was, as planned and executed, illegal in certain material respects, the executives nevertheless instructed their subordinates to go forward with the event. (*Id.* at 1051.)

Notwithstanding the extensive involvement of multiple Hughes executives in orchestrating the illegal fundraiser -- including executives who were "put on notice" prior to the event that it was illegal in various material aspects under section 441b(a) -- the FEC apparently sought enforcement against, and obtained a conciliation agreement ***only*** against Hughes Corporation and ***not*** against any of the Hughes' executives who were personally and substantially involved in the illegal fundraiser. (*Id.* at 1052, n. 4.)

The Commission's decision in the MUR underlying *FEC v. Friends of Jane Harman* to not name individual Hughes executives -- notwithstanding such executives' personal and substantial involvement in the illegal fundraiser -- is consistent with case law from throughout the country involving analogous statutory schemes, as well as past Commission MUR practice. Indeed, even where the Commission could have sought enforcement against individual executives in accordance with various legal doctrines, absent egregious factors that are not present here, the standard practice of the Commission is to seek enforcement against only the corporate entity. (*See by analogy, United States v. North American Van Lines* (U.S.D.C.) 202 F. Supp. 639, 644 (emphasis added) ["The accepted rule is that officers, directors and agents of a corporation may be held . . . liable for ***their*** acts . . . but where they have ***neither actively participated in*** nor directed nor authorized a violation of law by their corporation, ***they are not liable.***"]; *U.S. v. Sherpix, Inc.* (D.C. Cir. 1975) 512 F. 2d 1361, 1372 [stating same]; *Musikiwamba v. Essi* (7th Cir. 1985) 760 F. 2d 740, 753 (emphasis added) ["General corporation law is clear that personal liability for a corporation's debts cannot be imposed on a person merely because he is an officer, shareholder, and incorporator of that corporation. . . . Personal liability is imposed only when the officer is alleged to have ***taken part*** in the illegal act initially giving rise to the corporation's liability."]; *United States v. AmRep Corp.* (2d Cir. 1977) 560 F. 2d 539, 545 (emphasis added) (vacated in part on other grounds) ["[P]articipation by a corporation in [an illegal] scheme . . . ***does not ipso facto make participants of its officers.*** Prerequisite to such a finding is proof that the officers were 'conscious promoters' of the illicit scheme."].)

In MUR 3540 *In re Prudential Securities*, for example, the record demonstrated that multiple executives of Prudential Securities, Inc., including the Chairman of the company, engaged in a massive collective enterprise to engage in corporate facilitation for a variety of federal candidates. Indeed, the record demonstrated that many of the same executives involved in MUR 3540 – including its Chairman – had been involved in the same illegal conduct that was subject to a previous MUR. (*See* General Counsel's Report at 31; FEC Conciliation Agreement re MUR 3540 at 2.) Notwithstanding the demonstrated pattern and practice of the Prudential executives in violating section 441b(a), these executives were not subject to the final conciliation

agreement entered into with Prudential. (*See also* General Counsel's Brief, MUR 3672, *In re Matter of Chrysler Corporation* [recommendation to find probable cause against the Chrysler Corporation and not individual executives even though executives were active promoters of the illegal activities].)

In stark contrast to the authority set forth above, Mr. Wynn appears to have been inappropriately singled out as an improper respondent in this MUR, apparently based upon a single sentence contained in a New York Times article and a complaint which does not mention any substantial participation by Mr. Wynn in any campaign event, much less ever refer to Mr. Wynn at all. Based upon the fact that Mr. Wynn was not "personally involved" in any effort to use corporate resources to collect and forward contribution checks to the Gormley Committee, we do not believe that Mr. Wynn is a proper respondent in this MUR.

CONCLUSION

For all of the foregoing reasons, we believe that Mr. Wynn is not a proper respondent to MUR 5020, and we respectfully request that the Commission immediately dismiss Mr. Wynn as a respondent in this matter.

* * * * * *

We appreciate your consideration of the matters contained in this letter and we look forward to your response. In the interim, should you have any questions, please contact me directly at (714)-662-4610. We thank you for your courtesy in granting us an extension within which to provide this response.

RUTAN & TUCKER, LLP

John A. Ramirez

JAR
cc: Mr. Stephen A. Wynn
Mr. Marc Rubinstein, Esq.